

ESTATE OF RUTH NAHCOTATY (WILLIAMS OR DAUKEI)

(Deceased Caddo Allottee No. 19)

IBIA 75-6

Decided September 12, 1974

Appeal from an Administrative Law Judge's decision denying petition for rehearing.

Affirmed and Dismissed.

1. Indian Probate: Rehearing: Timely Filing

A petition for rehearing filed with an Administrative Law Judge was properly denied by the Judge where the petition was not filed within the period prescribed by the applicable regulations.

APPEARANCES: Leroy Irwin Williams, appellant, pro se, Justus Hefley for Cynthia Ruth Williams, appellee.

OPINION BY ADMINISTRATIVE JUDGE WILSON

Leroy Irwin Williams, hereinafter referred to as Appellant, has filed with this Board an appeal from an Administrative Law Judge's denial of his petition for rehearing. According to the record, Ruth Nahcotaty (Williams or Daukei), hereinafter referred to as the decedent, died testate July 24, 1973, at the age of 72, a resident of the State of Oklahoma. A hearing was duly held and concluded at Tulsa, Oklahoma, on December 7, 1973, for the purpose of ascertaining the heirs at law of the decedent, considering claims against the estate, if any, and to probate the purported last will and testament dated September 17, 1971.

Thereafter, on December 28, 1973, Administrative Law Judge John F. Curran issued an Order Approving Will and Decreeing Distribution. The said Order became final on February 26, 1974.

The Appellant, one of the devisees under the decedent's last will and testament, filed a petition for rehearing in the matter under date of May 31, 1974 alleging in support thereof the following reasons:

\* \* \* I request an order for rehearing in the above estate in order that I may submit new evidence. I will supply witnesses who will testify that it was the intention of my mother, Ruth Nahcotaty to will me the property described as W/2 NE/4, NE/4 NE/4, NW/4 SE/4 NE/4, S/2 NE/4 SE/4 NE/4, NW/4 NE/4 SE/4 NE/4,

S/2 S/2 NE/4 NE/4 SE/4 NE/4, N/2 N/2 NE/4 NE/4 SE/4 NE/4, N/2 S/2 SE/4 NE/4, N/2 SE/4 SE/4 SE/4 NE/4, SW/4 SE/4 SE/4 NE/4 and S/2 SW/4 SE/4 NE/4 of Section 27, Township 8 North, Range 12 West of the Indian Meridian, in Oklahoma, containing 157.50 acres, more or less. I also have witnesses who will testify that Cynthia Williams, my daughter coerced by mother to make a will naming her beneficiary to said property under threat of bodily harm.

The Administrative Judge under date of June 14, 1974, denied Appellant's petition for rehearing on the following grounds: (1) the 'Motion for Rehearing' was not timely filed and the Order is final and conclusive, and cannot be modified or vacated (43 CFR 4.241). Furthermore, the movant testified that he had no objection to the will "because after I talked with my mother, why she told me what she would like to have and what she wanted, and at first I was a little hesitant about it, but after considering it was her will and her wishes so then I know that she did it."

It is from the foregoing denial of June 14, 1974, that the Appellant has appealed to this Board.

[1] An examination of the record clearly indicates that the petition for rehearing was not timely filed with the Administrative Law Judge in compliance with 43 CFR 4.241 and that the Administrative Law Judge properly denied the petition. The Department has long

adhered to the rule that a petition not timely filed is subject to dismissal. In the case of Agatha Quiltairre (Qualtier), IA-114 (January 11, 1954), it was held that a petition for rehearing filed with an examiner of inheritance was properly denied by the examiner where the petition was not filed within the period prescribed by the applicable regulations. See also Estate of Henry Amauty, IA-879 (July 17, 1959).

Having considered the appeal, the Board can see no compelling reasons to deviate from the rule heretofore adhered to by the Department. Accordingly, the Administrative Law Judge's decision denying the appellant's petition for rehearing should be affirmed and the appeal dismissed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order of the Administrative Law Judge, dated June 14, 1974, be and the same IS HEREBY AFFIRMED and the appeal herein IS DISMISSED.

This decision is final for the Department.

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Alexander H. Wilson  
Administrative Judge

I concur:

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David J. McKee  
Chief Administrative Judge